O. Food Grains

1944 **File No.** Control / 44

Legal Department

A **BRANCH**

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Subject:—

Opinions Under the

Food Grains Control Order

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O. Food Grains Control / 44

File No.

Gen. 194 e.

209 H

CONTENTS.

Legal Department, File No. O.Foodgrains Control/1944.

Sr. No.	Compilation No.	Subject.	Pages.
	O.Food Grains Control 1944.	Opinions under the Food Grains Control Order.	
1.	On.1365 21-2-44.	Whether if it is proposed to levy fee for supply of duplicates of licenses issued it would be necessary to amend food grains control order.	1.
2.	On.1227 15-2-44.	Shop to carry on described business is to be decreted in the license if not the village town or taluka licensee with have to purchase or sell grains at their shops	3-4.
3.	On. 3110 26-4-444	Discretion of the Provl Govt. to limit the operation of the Order once the order comes into operation.	5.
4.	On.6077 30-1-44.	Term grain does not include the grain when can crushed.	7.
5.	On. 8236 23-11-44.	Attachment of paddy while in transit of the surrender by Sub-Divisional magistrate was not lawful	9.

PHh 7/8

NKH 9/8

As a general rule, no fee can be collected by Government except under a statutory provision. It would not therefore be legally in order for Government to charge by an executive order any fee for a duplicate of a license issued under the Foodgrains Control Order. That order ~~itself~~ itself will have to be amended for the purpose.

U.R. to F.D. 3d-/9/2 O/c Remembrancer of Legal Affairs. (Supply). No. 1365, dated the 21st Feb.1944

R
R. Submitted for signature.
N.P.
Issued 19/2 RK 19/2
dated 21/2
S.A.S.

A.L.K. RSK
R.L.A. 19/2

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file in O Foodgrains control/44.

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S.A.S.
R.T.K.
23/2

D.S. (after Issue) NRD 24/2
A.S. (" ") R.T.K. 24/2
P.A. (" ") ~~24/2~~
Addl.P.A.(" ") P.NM 25/2

O Food Grains Control/44.

29/2/44.

VGP. 9-7-56.

storage for sale in whole sale quantities of foodgrains in Form A prescribed under clause 4 of the Foodgrains Control Order 1942 provides: "The licensee shall carry on the aforesaid business at the following place(s)" Consequently the shop where the licensee is allowed to carry on his business is required to be described in the license and not village town or taluka in which his shop is situated. The District Magistrate, Belgaum in his letter at p.1 ante observes: "When a licensee is allowed to carry on his business in his shop, it is illegal for him to make prchase or sales any where except in his shop. Generally merchants made purchases of grains in villages and bring them to their shops. According to the strict interpretation of para 2 of the license they cannot make such purchases in the villages. If observance of this provision is enforced the licensees will have to purchase or sell grains at their shops only." To get over this difficulty he sugrest that clause 2 of the license may be amended so that a licensee can carry on his purchase or sale operations within a prescribed area and store his grains in the premises mentioned in clause 2 of the license. The question for the consid eration of the T.L.A. is whether it is necessary to amend clause 2 of the license for the purpose.

2. Clause 2 of the license requires the place of business to be specified. "Place of business" is the place where the trade is exercised. In Hajibukj Moera Routher vs. President of the Corporation of Madras (5 I.C. 744 which was foll wed in 108 I.C. 216) which was decision under the City Municipal Act (Madras) III of 1904, the Court has to consider that the words "exercising a trade" meant and it was held that where a person has a sevan servant at a certain place who purchases piece goo there and forwards them to another place where they are sold and profits are earned such person exercises trade within the meaning of section 120 of the Madras Municipal Act at the place where the piece goods are sold and not at the place where they are purchased. That case and some others were

Clause 2 of the license for purchase sale or storage for sale in whole sale quantities of foodgrains in Form A prescribed under clause 4 of the Foodgrains Control Order 1942 provides: "The licensee shall carry on the aforesaid business at the following place(s)" Consequently the shop where the licensee is allowed to carry on his business is required to be described in the license and not village town or taluka in which his shop is situated. The District Magistrate, Belgaum in his letter at p.1 ante observes: "When a licensee is allowed to carry on his business in his shop, it is illegal for him to make prchase or sales any where except in his shop. Generally merchants made purchases of grains in villages and bring them to their shops. According to the strict interpretation of para 2 of the license they cannot make such purchases in the villages. If observance of this provision is enforced the licensees will have to purchase or sell grains at their shops only." To get over this difficulty he suggest that clause 2 of the license may be amended so that a licensee can carry on his purchase or sale operations within a prescribed area and store his grains in the premises mentioned in clause 2 of the license. The question for the consideration of the R.L.A. is whether it is necessary to amend clause 2 of the license for the purpose.

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considered in Bombay Co; Ltd vs. Municipal Council (108 I.C. 216). The ratio decidendi of these cases appears to be that a place of business is the place where profits are earned. The same principle may be applied in the present case. A licensee may make purchases of food grains elsewhere; but he earns profits only when he sells them. His shop where he sells is the place where he earns profits. There appears therefore no objection to his purchasing foodgrains at any place other than the premises specified in his license; and such purchases are contemplated even by sub-clause (b) of clause 3 of the license. As regards sale, the dealer must not sell outside his shop. It does not appear necessary to amend the form of license as proposed by the District Magistrate, Belgaum unless it is necessary to make provision for sales outside the shops specified.

O/c. Sd/PNM
15/2/44.

U.R. to F.D. (Supply), No. 1227 dated the 15th February 1944
Submitted for signature.

S.A.S. R.T.K.
15/2

A.I.R. PSH.
15/2

R.L.A: Submitted after issue with index card. file in O. Foodgrains / 44.

Issued.
dt. 15/2

Sd.
16/2

R. T. K. 31/2

S A. S.

D.S. NKD
16/2

As. BGM.

PA.

APA. 29/3

No. 3110/

- 5 - Office of the

Remembrancer of Legal Affairs,
Bombay Castle, 26th April 1944.

Subject:- The Food Grains Control Order 1942.

Memorandum.

With reference to his letter No. 89 dated 2nd April 1944, on the subject noted above, the District Government Pleader, Ratnagiri is informed as under :-

The Food Grains Control Order 1942 extends to the whole of British India. clause 1(2) of the Order does not give the Provincial Government any discretion to limit the operation of the Order once the Order comes into oepration. Nor is any further action by the Provincial Government required to make amendments effective, The Only function of the Provincial Government under that clause is to appoint a date. By general Department Notification No. 76 - H dated 13th June 1942 the Government of Bombay has appointed a date and is now functus officio so far as clause 1 (2) is concerned. There is no question of issuing a further notification under that clause to make amendments applicable to the Province.

Submitted for signature. Sd/PNM 25/4/44

Remembrancer of Legal Affairs.

VGP. 9-7-56.

The Collector's view appears correct. A foodgrain is often distinguished from the flour or meal made from it and there are English cases to the effect that the term grain does not include the grain when crushed. But no case has been found where the term grain or foodgrain or wheat have been held to exclude grain in the husk. A foodgrain appears to be a foodgrain whether it is husked or not. The main argument that view is the fact that the Foodgrains Control Order, 1942 makes a distinction between rice husked and rice in the husk. These figure as separate commodities in the First Schedule to the Order. The reason for this appears to be that rice is the only grain which ordinarily comes to the wholesale market in the two forms of paddy and husked rice. It is understood from informal inquiries in F.D. (Supply) that the reason for this is that the husking of rice is more difficult than the husking of other foodgrains and secondly the retention of the husk preserves the rice for and secondly the retention of the husk preserves the rice for a longer period. For some purpose paddy and husked rice can therefore be treated in the market as two commodities and presumably it is for this reason that they figure separately in the above Schedule and not because it was intended to control wholesale dealings in rice in the husk while leaving uncontrolled other foodgrains in the husk. It therefore seems desirable to proceed with the prosecution may be reported to Government and if Government's view on this point is not accepted the question of appealing to the High Court may be considered.

Sd/ P.B.M. 29/8/44.

O.C.
Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No. 6077 dated the 30th August 1944.

Supt. for signature.

29/8

J. A.S (before issue) RTIc 29/8

It is not clear from the papers forwarded to L.D. whether or not paddy was surrendered to the Sub-Inspector of Police, Taluka Yellur in Kurandwadi State by the Sub-Divisional Magistrate, Belgaum City under the rule framed by Government under section 22 of the Indian Extradition Act, 1903 (see Government of India Foreign and Political Department Notification No. 362-I, dated the 20th July 1925 republished in Government Notification No, 3524 Political Department, dated the 27th July 1925 Bombay Government Gazette 1925 Part I, page 2049). It is however clear the paddy was surrendered to the State Police by the Sub-Divisional Magistrate, Belgaum City in the course of his duty as public ~~afforservant~~ in which case rule 4 of t Defence of India Rules affords legal cover to the ~~except~~ export thereof and the Bombay Foodgrains (Movement Control) Order, 1943 will not apply. The attachment by the Controller of Foodgrains Belgaum of paddy while in transit after surrender by the Suh-divisional Magistrate, Belgaum City was not therefore lawful.

Sd/ PNM 22/11/44.
Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 8236 dated the 23 November 1944.

VGP. 9-7-56.